IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4860 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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EMPIRE HOTELS & RESORTS LTD. - Petitioner(s)

Versus

REGIONAL PROVIDENT FUND COMMISSIONER & 1 - Respondent(s)

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Appearance :

MR AK CLERK for Petitioner(s) : 1,
MR PJ MEHTA for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 25/10/2005

ORAL JUDGMENT

1. In the present petition, the petitioner has challenged an order dated 29th May, 2003 passed by the Employees Provident Fund Appellate Tribunal in Appeal No. ATA 343(5) of 2003. By the impugned order the

Appellate Tribunal directed the petitioner to deposit 50% of the amount demanded by the Provident Fund authorities as a pre-condition to entertain the appeal.

2. By separate order passed in Civil Application No. 9826 of 2005 it was found appropriate to take up present Special Civil Application for early hearing. Both sides requested the Court to finally hear the petition today itself.

3. By a short speaking order passed on 27th July, 2004, this Court had stayed the implementation of the impugned order dated 29/5/2003 passed by the Appellate Tribunal on the condition that the petitioner deposits a sum of Rs. 1 lakh with the respondent within a period of two months from the date of receipt of a copy of this order. It is jointly stated that such deposit has been made.

4. While passing the interim order, this Court has taken notice of certain contentions raised on behalf of the petitioner. This Court also noticed the

averments made by the learned advocate for the petitioner that the petitioner company is in deep financial crises and direction to pay 50% of the amount demanded as a pre-condition to hearing the appeal would render the right of appeal nugatory.

5. Without repeating and elobrating the reasons already noted, in facts of the present case when the interim order has already been passed and is in operation since time now it would be appropriate to make the interim order as the final order in the present petition. In facts of the present case, therefore, the amount of Rs. 1 lakh already deposited by the petitioner be treated as sufficient compliance of pre-deposit for hearing the appeal on merits. To that extent impugned order dated 29/5/2003 is modified. Petition is allowed to the above extent. Rule is made absolute. No order as to costs.

6. The observations made by me in this order are only for the purpose of deciding the question of pre-deposit and the Appellate Tribunal may decide all questions in the appeal unmindful of these

observations.

(Akil Kureshi, J.)

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